IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 226 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHKUMAR NAVALRAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 226 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

Mr V M Pancholi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/03/2002

ORAL JUDGEMENT

This is an application under Article 226 and 227 of the constitution of India as well as under the provisions of the Criminal Procedure Code, 1973, challenging the orders of the two courts below granting

an application of the Police Investigating Officer for handing over the present petitioner to the police custody for further investigation in the matter. The petitioner has come out with a case that the police remand was sought for and granted on the ground that the present petitioner as an accused before the I.O. was not satisfactorily replying to the queries of the I.O. and that some muddamal ornaments were required to be recovered with the help of the custodial interrogation of the petitioner.

2. During the course of hearing, it is found that the above two grounds were considered by the two courts below and recorded concurrent findings of fact about the requirement of handing over the petitioner to the police custody for further interrogation and further investigation. When the two courts below have recorded concurrent findings about the requirement as above, it would be very difficult for this court to set aside those findings and the orders of the two courts below while exercising the extra ordinary jurisdiction under Article 226 or 227 of the Constitution of India. It cannot be said that the two courts below have committed serious illegality so as to adversely affect the interest of the petitioner. The only order which has been challenged here is to hand over the present petitioner to the police custody for a period of two days. Learned Advocate for the petitioner has contended that the petitioner may be harassed and may be ill-treated by the I.O. during the course of those 48 hours. It is well settled that whenever the accused persons are produced before the Magistrates, the Magistrates are required to enquire about the ill-treatments extended to them during the course of police custody. If any such ill-treatment is alleged, the Magistrate has to examine the persons of the accused persons and the result of such examination is required to be put in writing. Thereafter, the accused is required tobe referred to the Medical Officer for examination and if necessary administrative inquiry can also be undertaken by the Magistrate under the the directions of the Sessions Judge. Therefore, this will not be a ground for allowing the present petition.

3. It is next contended that the petitioner has handed over all muddamal ornaments which were in the possession of the petitioner. At the same time, it is a fact that the allegations are made against the petitioner that the ornaments have substantially not been produced and many ornaments are still required to be recovered from the custody of the petitioner. It is a fact that the petitioner had obtained order of Anticipatory Bail

and, therefore, the petitioner was required to be enlarged on bail soon after his arrest. Therefore, the I.O. had no chance to have custodial interrogation of the petitioner and, therefore, the police remand was sought by him. When the I.O. had no opportunity to have any sort of custodial interrogation, then it would be a good ground to hand over the petitioner to the police custody for further interrogation. For the purpose of recovery of the ornaments, custodial interrogation is necessary and the recovery of the muddamal ornaments will be an important link between the accused and the crime. Therefore, with a view to have an important link between the accused and the crime, custodial interrogation is necessary and for that purpose, the petitioner has to be entrusted to the police custody for custodial interrogation and further investigation.

4. Learned Advocate for the petitioner has relied upon a decision of this court in the case of State of Gujarat v. Swami Amar Jyoti Shyam, reported in 1989 (1) GLR 217. There the learned Judge of this court has considered the provisions of section 227 of the constitution of India and found that despite the dismissal of the criminal revision by the Sessions Court, it would be open to this court to deal with a petition under Article 227 of the constitution. At the same time, it has also been observed that a petition under Article 227 of the Constitution of India is maintainable with a scope much more restricted than the powers of the High Court under section 397 of the Code, but it cannot be said that such an application is not maintainable. This shows that the powers, functions and jurisdiction of this court while exercising extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India are very limited and restricted and when the two courts below have taken a view that the applicants' remand was absolutely necessary for a fair and just investigation, it is not open to this Court to differ from the view adopted by the two courts below.

5. Learned Advocate for the petitioner has also relied upon a decision of this Court in Criminal Revision Application No.463/2001. There this court has taken into consideration the aspect of appellant's remand while deciding the matter on 18.10.2001 (Coram: J R Vora, J.) and some observations have been made in this regard. However, those observations appear to have been made on the facts of that particular case. Even if we take it that the attitude of the petitioner in not responding the queries of the Investigating Officer may not be seriously looked into, the fact remains that some muddamal articles

are required to be seized through custodial interrogation of the petitioner as said above, and seizure of the muddamal and recovery thereof with the help of the petitioner is an essential ingredient for proving the case against the petitioner. It is argued that the petitioner is prepared to cooperate with the Investigating Officer even if he is not entrusted to police custody. Custodial interrogation always makes difference and, therefore, it is absolutely necessary that the I.O. should be at liberty to have custodial interrogation of the petitioner. In above view of the matter, I am of the view that no case is made out for interference with the orders of the two courts below and, therefore, the petition deserves to be dismissed.

6. For the foregoing reasons, this petition is ordered to be dismissed at admission stage.

22.3.2002 [D P Buch, J.]
msp